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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,118	03/11/2004	Eric Thomas Connolly	112703-324	8810

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

MAIL DATE	DELIVERY MODE
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06/01/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/798,118	CONNOLLY ET AL.	
	Examiner	Art Unit	
	Steven L. Weinstein	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sagel (6,142,366) in view of applicants' admission of the prior art, or vice versa, i.e. applicants' admission of the prior art in view of Sagel, both further in view of Boehm (1,334,346), Maggi (395,243), and Bond (2,689,798), further in view of Haiss (4,290,526), Jeanin (5,437,881), Redmond (3,986,640), Fischer (4,133,431), Hellstrom (3,472,368), and Ward (3,521,805).

In regard to claim 1, claim 1 now recites that the confectionary product is a plurality of pieces and that the one or more weakened regions correspond to at least one location substantially between the pieces of confectionary product. As was noted in the last Office action, it would have been obvious to modify Sagel and substitute one conventional food product for another conventional food product, especially since the art taken as a whole discloses the conventionality of candy pieces in rolls (applicants' admission of the prior art and Boehm). Since it would have been obvious to employ the tearable container of Sagel for applicants intended purpose, and since it was notoriously conventional when packaging two or more items in a stacked array in a tearable package to provide weakened regions in the packaging corresponding to at least one location substantially between the stacked, packaged items (including candy items) as evidenced by Boehm, Maggi, and even Bond, to further modify Sagel and provide the

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weakened regions in the area between the candy (or other articles, edible or inedible) for its art recognized and applicants intended function would have been obvious. The same reasoning is applicable employing applicants admission of the prior art in view of Sagel. The remainder of the claims are rejected for the reasons given above and in the last Office action mailed 12/21/06. Similarly, the remainder of the references applied are applied for the reasons given in the last Office action mailed 12/21/06. In regard to new claim 25, which recites that an opened section can hang from a remaining portion of the packaging material after a piece of the product is removed, this is an obvious function, to some extent, of how far the weakened region extends and the force applied to the wrapper. Thus, this language is a functional statement of intended use as was previously noted in regard to allowing access to the product by a single hand. In any case, Haiss and Jeannin show that it was conventional to open a package while allowing the opened section to hang.

Claims 1-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boehm (1,334,346), in view of applicants' admission of the prior art, or vice versa, i.e. applicants' admission of the prior art in view of Boehm (1,334,346), both further in view of Maggi (395,243), and Bond (2,689,798), further in view of Sagel ('366), Haiss (4,290,526), Jeanin (5,437,881), Redmond (3,986,640), Fischer (4,133,431), Hellstrom (3,472,368), and Ward (3,521,805).

In regard to claim 1, Boehm discloses a packaged confectionary product comprising at least two pieces of a confectionary product and a package material formed around the confectionary pieces wherein the package material has a weakened

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region corresponding to at least one location substantially between the pieces of confectionary product which would allow ready access of the pieces of confectionary product. Applicants admission of the prior art discloses that it is of course conventional to package a plurality of pieces of confectionary product in roll form, so that the number of pieces would have been an obvious matter of choice. Similarly, it would have been obvious to modify applicants admission of the prior art and provide weakened regions in the area recited in view of Boehm and the art taken as a whole.

Claim 1 also recites that the package includes an underlayer, which is otherwise not defined. As discussed in the last Office action it was well established in the art to employ packaging material including weakened areas as well as underlayers as evidenced by the art taken as a whole including Sagel, Maggi, Haiss, and Redmond. To modify Boehm and the combination and substitute one conventional packaging material for another conventional packaging material for its art recognized and applicants intended function would have been obvious. It is noted that does the art taken as a whole teaches that if the weakened portions go through the entire thickness of a packaging material, one should provide an underlayer, that would be a barrier material to help preserve the product. In regard to the method claims, since the art taken as a whole teaches it would have been obvious to modify Boehm by providing an underlayer, which can include a laminate, the particulars of the method, which have all been addressed in the last Office action, are seen to have been obvious in view of the references taken as a whole.

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Claims 1-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maggi ('243) in view of applicants' admission of the prior art, or vice versa, i.e. applicants' admission of the prior art in view of Maggi, both further in view of Boehm and Bond (2,689,798), further in view of Sagel ('366), Haiss (4,290,526), Jeanin (5,437,881), Redmond (3,986,640), Fischer (4,133,431), Hellstrom (3,472,368), and Ward (3,521,805).

In regard to claim 1, Maggi discloses a packaged food product comprising a plurality of pieces of food product and a package material formed around the plurality of pieces wherein the package material has one or more weakened regions (i) corresponding to at least one location substantially between the pieces which allows ready access of the pieces and wherein the package material includes an underlayer (metal foil). Claim 1 differs from Maggi in that the pieces are confectionary pieces. Applicants admission of the prior art discloses it was conventional to package confectionary pieces in a roll type package and since the art taken as whole also discloses it was conventional to package candy in a roll type package with weakened regions at the location between pieces, it would have been obvious to modify Maggi and substitute one conventional product to be packaged for another conventional product to be packaged. Similarly, it would have been obvious to modify applicants admission of the prior art and provide the roll type package of confectionary with the weakened regions at the recited location in view of Maggi, Boehm and the art taken as a whole. The remainder of the references are applied for the reasons given above and in the last Office action. For example, in regard to the claims which recite a laminate and the

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processing of the packaging material, as previously noted, the art taken as a whole teaches that laminates with structural layers and barrier layers, are, of course, notoriously conventional, and that it was conventional to completely score the outer layer and leave the barrier layer unscored. To modify Maggi and substitute one conventional packaging material for another conventional packaging material for its art recognized and applicants intended function would therefore have been obvious.

In summary, applicants have combined a number of structural features that are conventional in the art, employed them for their well known and intended function, and achieved no new or unexpected result therefrom. Also, applicants problem and solution is conventional and obvious. If one wishes to access the contents of a package containing at least several adjoining pieces, the art taken as a whole clearly and fairly teaches one to provide a laminate with an outer structural layer and inner barrier layer and provide scored or weakened regions in the structural layer in a location substantially between the pieces.

All of the remarks filed 3/21/07 have been fully and carefully considered but are essentially moot in view of the new ground of rejection necessitated by the amendment. Note, however, in regard to the urging that Sagel discloses a "thumb cut", this urging is directed to limitations not found in the claims. The claims do not exclude a "thumb cut". Also, the remarks take exception with the last Office action's position that the "thereby" clause is not supported by the content of the claim prior to the "thereby" clause. Simply stated, the claim would have to positively recite (prior to the "thereby" clause) something to the effect that the weakened regions are weakened sufficient to allow a user to

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access the pieces of confectionary product with a single hand. Of course, the recited language is silent as to what "access" means and the use of a user's thumb, which are urgings made in the remarks.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
5/25/07